

Quick Fact Sheet

Hoyer-Greenwood “Late-Term Abortion Restriction Act” (HR 809) v. “The Partial-Birth Abortion Ban Act” (HR 760)

WHAT IS H.R. 809, THE HOYER-GREENWOOD LATE-TERM ABORTION RESTRICTION ACT?

- It makes it unlawful to knowingly perform an abortion after the fetus has become viable, unless, in the medical judgment of the attending physician, it is necessary to preserve the life of the woman or to avert serious adverse health consequences to her.
- It addresses the very heart of the matter in the ongoing abortion debate: the termination of viable fetuses in the late stages of pregnancy.
- The bill's language – to avert “serious adverse health consequences” – is tailored to ensure that only late-term pregnancies that pose a genuine threat to the mother's health may be terminated, while protecting women's rights as outlined in *Roe v. Wade*.

IS H.R. 809 CONSTITUTIONAL?

- YES. It is consistent with the Supreme Court ruling in *Stenberg v. Carhart*, which struck down Nebraska's “partial-birth” abortion ban, that post-viability abortion restrictions must include life and health exceptions.

WHAT IS H.R. 760 THE PARTIAL-BIRTH ABORTION BAN ACT?

- It makes it unlawful to knowingly perform a “partial-birth” abortion, except when necessary to save the life (not the health) of a mother.
- Leading medical groups, including the American College of Obstetricians and Gynecologists, the American Medical Association, the American Nurses Association, and the American Medical Women's Association, do not support the Partial-Birth Abortion Ban Act.

IS H.R. 760 CONSTITUTIONAL?

- NO. The U.S. Supreme Court ruled in *Stenberg v. Carhart* that a similar Nebraska “partial-birth” abortion law was unconstitutional for two reasons: 1) it lacked a health exception to protect the mother; and 2) placed “undue burden” upon a woman's right to choose an abortion procedure.
- H.R. 760 tries to alter the facts upon which *Stenberg* was decided. The bill challenges the Court's findings that “partial-birth” abortion may, in some circumstances, be the safest abortion procedure for some women.

WHAT ARE THE KEY DIFFERENCES BETWEEN THE TWO BILLS?

- In talking about abortion, it is important to distinguish between the terms “late-term abortion” and “partial-birth abortion”. “Late-term abortion” refers to **when** abortions are performed (i.e., post-viability) and “partial-birth abortion” refers to **how** abortions are performed (i.e., a particular procedure). These two terms are often used interchangeably which contributes to the confusion surrounding the debate on abortion. It is crucial to an honest debate on this issue that these terms are used correctly.
- The Partial-Birth Abortion Ban Act **would not prevent a single late-term abortion** because it only prohibits a single procedure that is performed in the most tragic of circumstances, while the Late-Term Abortion Restriction Act would help curb abortions after viability.
- The Late-Term Abortion Restriction Act is consistent with the Supreme Court's ruling in *Stenberg* and, as a result, is constitutional. Furthermore, it resembles laws in 41 states* that specifically prohibit abortion after viability under specified circumstances
- Not only is the Partial-Birth Abortion Ban Act unconstitutional but it would be an unprecedented intrusion by Congress into the practice of medicine, while the Late-Term Abortion Restriction Act respects the need for doctors to make decisions with their patients.

WHICH BILL REPRESENTS A COMMON SENSE, COMMON GROUND APPROACH TO ABORTION?

- **The Late-Term Abortion Restriction Act represents the common ground** upon which most Americans and Members of Congress can agree in the often daunting and contentious debate on abortion.

WILL THE LATE-TERM ABORTION RESTRICTION ACT BE GIVEN AN UP OR DOWN VOTE ON THE HOUSE FLOOR?

- It is expected that the Republican leadership will NOT give The Late-Term Abortion Restriction Act an up or down vote on the House Floor.
- This is yet another example of the Republican leadership making a politically calculated decision to rig the rules and to stifle debate
- Anything less than a full and fair debate with H.R. 809 in order as a substitute to H.R. 760 demeans this great institution and subverts the will of the people.

*Alabama, Arizona, Arkansas, California, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin and Wyoming

May 1, 2003

TAKE THIS OPPORTUNITY TO SUPPORT A RATIONAL LATE-TERM ABORTION LAW

Dear Colleague:

We still have an opportunity to pass commonsense abortion legislation that restricts late-term abortions with the constitutionally necessary exceptions for the life or health of the mother. ***H.R. 809, the Late Term Abortion Restriction Act***, which we introduced earlier this year, meets the Constitutional standards set by the Supreme Court in *Stenberg v. Carhart*, in which the Court held that Nebraska's "partial-birth" abortion ban was unconstitutional because it lacked an exception for the health of the mother and was so broadly written that it created an "undue burden" upon a woman's right to choose a more common abortion procedure used before fetal viability.

Proponents of the H.R. 760, the Partial Birth Abortion Ban Act, have written legislation that deliberately excludes an exception for the health of the woman because they conclude no health exception is necessary. According to Simon Heller, the lead trial attorney in *Stenberg v. Carhart*, "Congress is attempting to overturn Supreme Court constitutional precedent by enacting a law that fails to adhere to the precedent."

Hoyer-Greenwood prohibits all late-term abortions, irrespective of procedure, with exceptions only to protect the life of the mother and to avert serious, adverse consequences to her health. Supporters of the Hoyer-Greenwood bill—20 Members on both sides of the aisle—share the belief that once a fetus develops to the point of viability, only the life of the mother and serious, adverse consequences to her health can take precedence over the further development of that fetus.

In fact, the Hoyer-Greenwood bill resembles laws that specifically prohibit abortion after viability under specified circumstances in 41 states:

Alabama, Arizona, Arkansas, California, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin and Wyoming.

We believe Hoyer-Greenwood protects a woman's right to choose while reaching common ground in the divisive abortion debate by prohibiting all late-term post-viability abortions by whatever method or procedure, as long as it is in the judgment of an attending physician that it is needed to preserve the life or health of the mother.

So as you contemplate the upcoming debate on late term abortion, we urge you to consider the sensibility of the Hoyer-Greenwood bill, which accomplishes what the Supreme Court says is needed to make a late-term abortion ban constitutional.

Please join us in co-sponsoring H.R. 2702 by contacting DeWayne Davis on Rep. Hoyer's staff at 5-4131 or Matt Hagarty on Rep. Greenwood's staff at 5-4276.

Sincerely,

STENY H. HOYER

JAMES C. GREENWOOD

*Current cosponsors include Reps. Boehlert, Boucher, DeLauro, Dooley, Frank, Hinchey, Hoeffel, Johnson (CT), Kind, Kirk, Kolbe, McCarthy (MO), Menendez, Moore, Moran (VA), Loretta Sanchez, Schiff, Scott (VA), Smith (WA), Tauscher, and Wynn.

NEWS ADVISORY

U.S. House to Consider Unconstitutional Abortion Ban Bill Next Week

GOP Leadership Expected to Reject Bipartisan Alternative, Opting for Political Issue Instead

To: Editors, Editorial Writers and Reporters
From: House Democratic Whip Steny H. Hoyer (D-MD)
Re: Abortion Bill Scheduled to be on House Floor Wednesday, June 4, 2003
Date: Friday, May 30, 2003

U.S. House Judiciary Committee Approves Unconstitutional "Partial-Birth" Abortion Ban Bill

Just three years after the United States Supreme Court struck down Nebraska's "partial-birth" abortion ban as unconstitutional in *Stenberg v. Carhart*, the House Judiciary Committee cleared similar legislation (the "Partial Birth Abortion Ban Act," H.R. 760) on April 3rd for consideration on the House Floor next week even though that legislation openly defies the Court's ruling. H.R. 760, introduced by Rep. Steve Chabot (R-OH), was approved by the Judiciary Committee on a straight party-line vote of 19-11.

The Supreme Court's Holding in Stenberg v. Carhart

H.R. 760 stands in direct defiance of the Supreme Court's ruling in *Stenberg v. Carhart*, 530 U.S. 914 (2000). The Court held in *Stenberg* that a Nebraska law proscribing so-called partial-birth abortions was unconstitutional because it (1) lacked the requisite exception for the preservation of the health of the mother and (2) impermissibly placed an "undue burden" upon a woman's right to choose an abortion procedure that is commonly used **before** fetal viability.

Writing for the Court in *Stenberg*, Justice Stephen Breyer stated: "[W]here substantial medical authority supports the proposition that banning a particular abortion procedure could endanger women's health, [Supreme Court precedent in *Planned Parenthood of Southeastern Pa. v. Casey*] requires the statute to include a health exception when the procedure is 'necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.'"

Despite Superficial Changes, H.R. 760 Continues to Flaunt Required Health Exception

H.R. 760 explicitly tries to alter the facts. For example, the bill rejects the Supreme Court's findings in *Stenberg* that partial-birth abortion may, in some circumstances, be the safest abortion procedure for some women. Furthermore, it states that partial-birth abortion

is *never* necessary to preserve the health of the woman - **an assertion disputed by medical professionals**. Lastly, H.R. 760 includes a new definition of partial-birth abortion in response to the Court's holding that the Nebraska law placed an undue burden on women seeking abortions because its definition of partial-birth abortion could be construed as banning another abortion procedure. **Nevertheless, the core constitutional issue of a failure to include a health exception for the mother remains.**

Bipartisan Alternative Expected to be Shut Out of the Debate – Once Again

A bipartisan group of more than 20 Members of Congress has sponsored the "Late Term Abortion Restriction Act" (H.R. 809). This bill stands in sharp contrast to H.R. 760 - it is constitutional and it addresses an area of common ground. In addition, this bipartisan, commonsense legislation not only will pass constitutional scrutiny but also gets to the very heart of the matter in the ongoing abortion debate: the termination of viable fetuses in the late stages of pregnancy. The Late Term Abortion Restriction Act focuses on when abortions are performed rather than how they are performed. It sends an unmistakable signal that **all** late-term abortions should be banned, regardless of the medical procedure used, *so long as there are exceptions for the life and the health of the mother*. Furthermore, it resembles laws in 41* states that specifically prohibit abortion after viability under specified circumstances.

Unlike the Nebraska law that was invalidated in *Stenberg* and H.R. 760, the Late Term Abortion Restriction Act does not prohibit any abortion *if, in the medical judgment of the attending physician, the abortion is necessary to preserve the life of the woman or to avert serious adverse health consequences to the woman*.

Unfortunately, it is expected that this bipartisan bill's proponents will NOT be given the opportunity to offer it as a substitute to H.R. 760 on the House Floor next week. And this is not the first time the proponents of this commonsense bill have been shut out of this debate. On several occasions over the years, the House leadership has refused to give Members the opportunity to vote on this bill.

Please Urge the House Leadership to Let Members Vote Up or Down on H.R. 809

In past years, the proponents of the bipartisan, commonsense approach embodied in H.R. 809 have been prevented from even offering their legislation for a vote on the House Floor. This year, as the Majority has done consistently over the last few months on various important issues that have come to the House Floor, the leadership seems bent on employing that patently unfair legislative tactic again. **In analyzing this issue, we hope you will write editorials/columns urging the House leadership, at the very least, to provide the proponents of H.R. 809 with an up-or-down vote on this important legislation – particularly in light of the blatant unconstitutionality of H.R. 760.**

*Alabama, Arizona, Arkansas, California, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin and Wyoming

"[Senator] Santorum also said he did not know if the ban [on partial- birth abortion] itself would prevent a single abortion but that he believed the public awareness raised by the debate 'has stopped many.'"

The New York Times, 3/14/03

March 17, 2003

Dear XXXX:

As you know, the Senate passed legislation last week that would prohibit doctors from performing the medical procedure that abortion opponents have named partial-birth abortion. Rep. Steve Chabot (R-OH), the chief sponsor of a companion measure (the "Partial-Birth Abortion Ban Act," H.R. 760), has stated that he expects that legislation to be on the House Floor for a vote before the end of April.

The Members of this body have weathered this contentious debate many times before. However, I am writing to you today for three reasons:

- 1) to highlight the fact that the Partial-Birth Abortion Ban Act is unconstitutional in light of the Supreme Court's decision nearly three years ago in *Stenberg v. Carhart*, 530 U.S. 914 (2000), and that even if this bill were to become the law of the land, it would not prevent one late-term abortion;
- 2) to articulate why you should consider supporting the "Late Term Abortion Restriction Act" (H.R. 809), which is bipartisan, compromise legislation that I introduced again this year with Reps. Greenwood (R-PA), Tauscher (D-CA), Johnson (R-CT), and others; and
- 3) to forewarn you that the Members of this body very likely will never be given the opportunity to vote on the Hoyer-Greenwood Late Term Abortion Restriction Act because the Republican leadership has indicated that it intends to refuse, as it has repeatedly in past years, to make H.R. 809 in order as a substitute. In fact, Rep. Chabot told the *Baltimore Sun* last week that "I do not believe it [H.R. 809] will be taken up in the House."

Thus, if the proponents of H.R. 809 are blocked from offering it as a substitute to H.R. 760, it will be yet another example in this new Congress of the Republican leadership making a politically calculated decision to rig the rules and to stifle debate. These legislative tactics fly in the face of previous statements by the Chairman of the Rules Committee, David Dreier,

concerning the importance of open rules and fair, honest debates.

For example, Chairman Dreier stated on the House Floor on May 26, 1994: “The only opportunity we have to be equal players, as the Constitution intends, is to have an opportunity to have amendments on this Floor.” And on March 30, 1993, he stated: “Frankly, it seems to me that the process of representative government means that a person who represents 600,000 people here should have the right to stand up and put forth an amendment and then have it voted down if it is irresponsible.”

Hoyer-Greenwood (H.R. 809) Addresses the Heart of the Matter, and It’s Constitutional

This legislation addresses the very heart of the matter in this ongoing debate: the termination of viable fetuses in the late stages of pregnancy. Unlike the Nebraska law that was invalidated in *Stenberg* and the intent of H.R. 760, the Late Term Abortion Restriction Act does not prohibit any abortion if, in the medical judgment of the attending physician, the abortion is necessary to preserve the life of the woman or to avert serious adverse health consequences to the woman.

The Late Term Abortion Restriction Act focuses on *when* abortions are performed rather than *how* they are performed. It does not eliminate a particular medical procedure; nor does it intrude on the practice of medicine. Instead, it sends an unmistakable signal that all late-term abortions should be banned, regardless of the medical procedure used, with exceptions for the life and the health of the mother. Thus, it is entirely consistent with the Supreme Court's ruling in *Stenberg* and, as a result, constitutional. Furthermore, it resembles laws in 41 states that specifically prohibit abortion after viability under specified circumstances.

Of course, some claim that the legislation’s exception to protect the health of the mother is overly broad and would give the attending physician wide discretion in deciding whether an abortion is necessary. However, the bill's language – to avert “serious adverse health consequences” – is tailored to ensure that only those late-term pregnancies that pose a genuine threat to the mother's health may be terminated, while at the same time protecting a woman’s right to choose as outlined in *Roe v. Wade*.

Partial-Birth Abortion Ban Act (H.R. 760) Will Not Prevent One Late-Term Abortion

As Senator Santorum all but admitted to the *New York Times* in the passage above, the Partial-Birth Abortion Ban Act is fundamentally flawed. It will not prevent one late-term abortion. Instead, it would only ban one specific medical procedure that is performed in the most tragic of circumstances. Physicians would still be able to employ alternative procedures.

Joseph M. Scheidler, national director of the Pro-Life Action League, acknowledged this flaw during the House debate on similar legislation three years ago. He wrote in the *Chicago*

Tribune: "Outlawing the partial birth abortion procedure will probably not save one child's life because other methods of late-term abortion are available."

Furthermore, H.R. 760 stands in direct defiance of the Supreme Court's ruling in *Stenberg*. In that case, the Court held that a Nebraska law proscribing partial-birth abortions was unconstitutional because it 1) lacked the requisite exception for the preservation of the health of the mother and 2) impermissibly placed an "undue burden" upon a woman's right to choose an abortion procedure that is commonly used before fetal viability.

Writing for the Court in *Stenberg*, Justice Stephen Breyer stated: "[W]here substantial medical authority supports the proposition that banning a particular abortion procedure could endanger women's health, [Supreme Court precedent in *Planned Parenthood of Southeastern Pa. v. Casey*] requires the statute to include a health exception when the procedure is 'necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.'"

H.R. 760 attempts an end run on the Court, explicitly altering the facts upon which *Stenberg* was decided. The bill challenges the Court's findings that partial-birth abortion may, in some circumstances, be the safest abortion procedure for some women. Further, it states that partial-birth abortion is never medically necessary to preserve the health of the woman.

Regardless of where your conscience leads you in this debate, I hope that this short memo will convince you that H.R. 809 represents the right policy on late-term; that it clearly is constitutional; and that it reflects the laws of the great majority of states. H.R. 760 is none of these things.

A Full and Fair Debate

Finally, I hope when this issue hits the Floor in just a few short weeks that you join me and many others in arguing for a full and fair debate that makes H.R. 809 in order as a substitute to H.R. 760. Anything less than that demeans this great institution and, in my view, subverts the will of the people.

If you have any questions concerning the bipartisan Late Term Abortion Restriction Act (H.R. 809), please do not hesitate to contact me or DeWayne Davis of my staff at 5-4131.

With kindest regards, I am

Sincerely yours,

STENY H. HOYER

Background on H.R. 119, The Family Time Flexibility Act

House Republicans falsely claim that H.R. 119 will allow parents to spend more time with their families, attend teacher conferences, or care for an ill relative. In reality, H.R. 1119, which was opposed by all Democrats on the House Education and Workforce Committee, undermines the basic protections of the 40-hour workweek and would result in a real pay cut for the millions of workers and their families who depend on overtime pay to meet their housing, food, and healthcare needs.

The Fair Labor Standards Act (FLSA) currently requires employers to pay workers time-and-a-half cash for hours worked in excess of 40 per week. H.R. 1119 would allow employers to pay workers nothing for overtime work at the time it is performed, in exchange for a promise of compensatory time off in the future. In addition to organized labor, other groups opposed to the bill are: NOW, the National Women's Law Center and the National Partnership for Women and Families.

Comp Time Controlled by Employer, Not Worker

Under this bill, no worker has a right to ask for compensatory time off - the employer must offer it. An employer may arbitrarily decide to offer comp time only to some workers while denying it to others; or an employer may arbitrarily deny compensatory time to a worker on some occasions, while offering it to the same worker on others. And while the bill prohibits employers from threatening or coercing workers to take comp time, employers could only offer overtime work to a worker who agrees to accept comp time in lieu of overtime pay, although millions of workers rely on their overtime wages to earn a salary that supports their families.

No Right for Workers to Use Comp Time

Also under this bill, an employer may deny the worker the right to use "earned" comp time if it would "unduly disrupt" the employer's operation. Workers do not have the right to use the comp time when the worker needs it.

Comp Time is a Low-Interest Loan to Employers

H.R. 1119 permits an employer to defer paying anything, for up to a year and a month, for overtime work. H.R. 1119 makes overtime cheaper for employers and thereby weakens the FLSA's disincentive

against excessive hours. Furthermore, if an employer “pays out” the earned comp time after thirteen months, the worker is not entitled to interest on the wages deferred over that long period of time.

Flexibility Under Current Law

House Republicans argue that the 1938 Fair Labor Standards Act is “outdated” and does not meet the needs of workers in today’s economy.

But the FLSA already allows employers to give workers time off when requested, the ability to arrange for a flexible work schedule, and to reward workers who work overtime with additional time off.